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**BOE sales and use tax audit can lead to income tax audit**

Most tax preparers and their clients understand that changes made by the IRS during a federal income tax examination typically affect the client's corresponding California income tax return. However, it is less widely known that the same principle may apply to audit adjustments made to sales and use tax returns. Often, the California Board of Equalization's (BOE) adjustments to sales and use tax returns has a direct impact on both gross receipts and business expenses on the income tax return.

The BOE provides us with copies of sales and use tax audit reports for the audits that result in adjustments of additional gross receipts (total sales) (BOE Audit Manual, Section 0206.40). We review these sales and use tax reports to determine if an income tax adjustment is warranted, then advise the taxpayer in writing before making the appropriate adjustments. We have found that the most common income tax items affected by a sales and use tax audit are total sales (gross receipts) and cost of goods sold.

**What actions should you take at the conclusion of a sales and use tax examination?**

Review the audit report at the conclusion of a sales and use tax examination, to determine if any changes were made to reported sales (total sales and/or taxable sales). In situations where total sales were adjusted, review the corresponding income tax return to determine if an adjustment is needed. If you find the changes made by the BOE result in a change in California income tax liability for the corresponding tax years, your client should file an amended income tax return.

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**New nonresident withholding incentive program for withholding agents**

In the November 2007 and August 2008 issues of *Tax News*, we publicized our ongoing audits to increase withholding compliance. Soon we will offer a voluntary incentive program where withholding agents, who have not previously withheld, may remit past-due non-wage withholding for tax year 2008 until March 15, 2009. Non-wage compensation includes:

- Interest and dividends.
- Rent and royalties.
- Prizes and winnings.
- Premiums and annuities.
- Compensation for personal services.
- Other fixed or determinable annual or periodical gains, profits, and income.

As an incentive, we will apply reasonable cause to waive the penalties for the following:

- Failure to file correct information returns, Form 592.
- Failure to file correct information returns, Form 592-B.

We made significant changes in 2008, particularly with regard to our nonresident, quarterly withholding program, and our audit and compliance program. New withholding requirements are

also effective January 1, 2009, with the enactment of Assembly Bill 3078. In order to provide a greater degree of awareness and to enhance compliance for new withholding agents, we plan to offer this year-end 2008 voluntary incentive program, where we will waive certain penalties that have reasonable cause provisions. Beginning in 2009, we will solicit information from all sources to increase compliance in future years.

Check our website after December 15, 2008, for news, forms, and detailed instructions on our new voluntary withholding incentive program. You may access our news by searching for **withholding incentive** on our [nonresident withholding webpage](#).

We will publish news and tools that will assist withholding agents in filing the proper forms.

If you have questions, you may contact us by email at [wscs.gen@ftb.ca.gov](mailto:wscs.gen@ftb.ca.gov). Type "NWIP" in the subject line. This is not a secured email address. Please do not send confidential information.

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## Withholding on California source income payments

Unless certain exceptions apply, those who make payments to nonresidents must withhold and send to us 7 percent of all gross payments that exceed \$1,500 in a calendar year.

This withholding does not relate to sales of California real estate. See our website for updated information on [real estate withholding](#).

## New procedural information available

We currently have new procedural information about [nonresident withholding](#) on payments of California source income. These procedures apply to those who pay either nonresident independent contractors or other nonresidents who receive California source income.

## Updates coming in January 2009

Check our website in January 2009 for updated resident and nonresident withholding information. You'll access the information by searching for **withholding** on our homepage. Updates will include:

1. Online registration for our spring 2009 nonresident withholding workshops.
2. FTB withholding forms:
  - 592, *Quarterly Resident and Nonresident Withholding Statement*.
  - 592-A, *Foreign Partner or Member Quarterly Withholding Remittance Statement*.
  - 592-B, *Resident and Nonresident Withholding Tax Statement*.
  - 592-F, *Foreign Partner or Member Annual Return*.
  - 587, *Nonresident Withholding Allocation Worksheet*.
  - 588, *Nonresident Withholding Waiver Request*.
  - 589, *Nonresident Reduced Withholding Request*.

- 590, *Withholding Exemption Certificate*.
3. Revised FTB Pub. 1017, *Resident and Nonresident Withholding Guidelines*.
  4. News and procedure tools to help withholding agents apply California resident and nonresident withholding on payments to:
    - Entertainment-related nonresident independent contractors.
    - Nonresident independent contractors.
    - Nonresidents who receive other types of California source income.
    - Beneficiaries of estate or trust distributions. (This can apply to resident or nonresidents.)
    - Partners or members receiving partnership or LLC distributions.

### Have questions now?

Contact us:

- Website: [ftb.ca.gov](http://ftb.ca.gov) – Search for **withholding** on our homepage.
- Phone: **888**.792.4900 or 916.845.6262 (not toll-free).
- Email: [wsc.gen@ftb.ca.gov](mailto:wsc.gen@ftb.ca.gov). Type **nonresident withholding** in the subject line. This is not a secured email address. Please do not send confidential information.

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### Annual Taxpayers' Bill of Rights Hearing

The Franchise Tax Board holds public meetings several times each year. A formal notice is posted on our website at least 10 business days before the meeting so interested individuals may prepare to attend.

The Franchise Tax Board's Taxpayers' Bill of Rights Hearing has typically been held during the last Board meeting of the calendar year. This year, the meeting is expected to take place on December 4. Although the Board has not yet finalized the meeting agenda, staff expects that the Bill of Rights Hearing will be on the agenda for that meeting. The public is encouraged to provide either written or oral comments at the hearing on any issues related to the laws or procedures administered by the Department. In addition, members of the public may submit written comments in advance for consideration by the Board at the meeting.

### Send comments to:

Taxpayer Advocate  
P. O. Box 1468  
Sacramento, CA 95812-1468  
FAX: 916.843.6022  
Email: [Taxpayer.Advocate@ftb.ca.gov](mailto:Taxpayer.Advocate@ftb.ca.gov)

## A SWIFT conversion for information reporters

Information Reporters that submit more than 250 Information Returns electronically and filed their 2007 returns using our e-Information Return program, will be converted January 1, 2009, to our Secure Web Internet Filing Transfer (SWIFT) to submit files. They were notified of the conversion process in September 2008.

Information reporters that did not file using our e-Information Return program and want to sign up for SWIFT, can e-mail us at [IRPhelp@ftb.ca.gov](mailto:IRPhelp@ftb.ca.gov) or call us at 916.845.6304.

The benefits of using SWIFT are:

- **Proof of receipt** – We provide acknowledgement that we received your file.
- **Safety** – We use the latest technology to ensure the security and privacy of all taxpayer data.

You can find more information about SWIFT on our website [ftb.ca.gov](http://ftb.ca.gov) (search for SWIFT).

Note: To conform to IRS file submission policy, tax year 2008 is the last year we will accept tape cartridges, diskettes, and compact discs (CDs) for the filing of information returns. For 2009, electronic filing will be the **only** acceptable method to file information returns with us.

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## Mandatory e-pay required for high-income individual taxpayers

Senate Bill 1389 (signed by the governor on September 30, 2008) added Section 19011.5 to the Revenue and Taxation Code, requiring some taxpayers to make their tax payments using an electronic method.

Beginning January 1, 2009, personal income taxpayers whose tax liability is greater than \$80,000, or who make an estimated tax or extension payment that exceeds \$20,000 for taxable years beginning on or after January 1, 2009, must send the payment electronically. Once either of these conditions is met, all payments regardless of type, amount, or tax year must be remitted electronically. Electronic payment methods include Electronic Funds Withdrawal (EFW), WebPay, or credit card.

There is a one percent penalty of the amount paid unless the failure to pay electronically was for reasonable cause and not willful neglect.

Taxpayers whose tax thresholds fall below the mandatory e-pay amounts may request to discontinue making electronic payments. FTB will provide a waiver form for taxpayers to file. The waiver form will be available in March 2009.

We plan to send a courtesy letter to taxpayers who made a payment in 2008 that could qualify them for mandatory e-pay. The letter will inform these taxpayers of the law change, and that they may meet the mandatory e-pay threshold in 2009.

Check our website after **November 17, 2008**, for more information. Go to [ftb.ca.gov](http://ftb.ca.gov) and search for “mandatory e-pay.”

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### **New e-pay toolkit**

Paying electronically saves time, hassle, and trees – and it’s now even easier to assist your clients with electronic payments. The e-pay Toolkit, now available at [ftb.ca.gov](http://ftb.ca.gov) provides practitioners with:

- Posters for the Practitioner’s office, promoting e-pay.
- Pamphlets outlining the available e-pay options: Web Pay, Electronic Funds Withdrawal, and credit card.
- Notes you can provide to clients, with amount due, and step-by-step e-pay instructions for your clients.

Paying electronically benefits you, your clients, and the environment. So go to our website and search for e-pay Toolkit. These new tools are ready for you!

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### **Schedule HOH and RAR workshops**

It’s not too late to request a workshop. The Franchise Tax Board is currently accepting requests from tax organizations and tax practitioner chapters.

The workshops provide an in-depth review and updated information about the Head of Household (HOH) and Revenue Agents Report (RAR) audit programs. Each workshop is two hours long and can be held separately or jointly. Please note that we cannot schedule workshops with individual tax practitioners.

If you have questions or would like to schedule a HOH or RAR workshop, contact our coordinators:

#### **Head of Household**

Coordinator: Bonnie Hoyle  
Telephone: 916.845.3959  
Fax: 916.843.5449  
Email: [hohwebpage@ftb.ca.gov](mailto:hohwebpage@ftb.ca.gov)

#### **Revenue Agent Report**

Coordinator: Estela Evangelista  
Telephone: 916.845.7359  
Fax: 916.843.6138  
Email: [Estela.Evangelista@ftb.ca.gov](mailto:Estela.Evangelista@ftb.ca.gov)

Please give us 20 days’ advance notice and tell us your preferred date and time, as well as two alternate dates.

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**2008 State income tax rates adjusted for inflation**

The 2008 state tax brackets have been adjusted for inflation using a process called indexing.

"By indexing the tax rates, a California household with unchanged income will pay 5 percent less in State income taxes," said State Controller and FTB Chair John Chiang.

The state is adjusting the tax brackets, filing requirement thresholds, the standard deduction, and certain credits based on the inflation rate of 5 percent, as measured by the California Consumer Price Index for all urban consumers from June 2007 to June 2008. Last year's inflation rate measured 3.1 percent.

The standard deduction will increase for single or married filing separate taxpayers from \$3,516 to \$3,692. For joint, surviving spouse, or head of household taxpayers, the standard deduction increases from \$7,032 to \$7,384. The personal exemption credit amount for single, separate, and head of household taxpayers will increase from \$94 to \$99 and for joint or surviving spouse from \$188 to \$198. The dependent exemption credit increases from \$294 to \$309 for each dependent. Renter's credit is available for single filers with adjusted gross income of \$34,936 or less and joint filers with adjusted gross income of \$69,872 or less.

In addition, FTB provides minimum filing requirement thresholds to ensure that most people who will not owe taxes are not required to file a tax return. FTB adjusts these tables each year to include the added senior exemption and the dependent exemption credits. The tax threshold, the amount of income reached where a tax liability is incurred, has risen to an adjusted gross income of \$12,226 for single or married filing separate taxpayers, and to \$24,452 for joint, surviving spouse, and unmarried head of household filers.

Other tax credits affected by indexing include the Joint Custody Head of Household Credit, Dependent Parent Credit, and Qualified Senior Head of Household Credit.

See the following charts for tax rates and filing requirement amounts.

## 2008 California Tax Rate Schedules

<b>SCHEDULE X</b> SINGLE OR MARRIED FILING SEPARATE TAXPAYERS					
IF THE TAXABLE INCOME IS		COMPUTED TAX IS			
OVER	BUT NOT OVER	OF AMOUNT OVER			
\$0	\$7,168	\$0.00	PLUS	1.0%	\$0
\$7,168	\$16,994	\$71.68	PLUS	2.0%	\$7,168
\$16,994	\$26,821	\$268.20	PLUS	4.0%	\$16,944
\$26,821	\$37,233	\$661.28	PLUS	6.0%	\$26,821
\$37,233	\$47,055	\$1,286.00	PLUS	8.0%	\$37,233
\$47,055	AND OVER	\$2,071.76	PLUS	9.3%	\$47,055

  

<b>SCHEDULE Y</b> MARRIED FILING JOINT OR QUALIFYING WIDOW(ER) TAXPAYERS					
IF THE TAXABLE INCOME IS		COMPUTED TAX IS			
OVER	BUT NOT OVER	OF AMOUNT OVER			
\$0	\$14,336	\$0.00	PLUS	1.0%	\$0
\$14,336	\$33,988	\$143.36	PLUS	2.0%	\$14,336
\$33,988	\$53,642	\$536.40	PLUS	4.0%	\$33,988
\$53,642	\$74,466	\$1,322.56	PLUS	6.0%	\$53,642
\$74,466	\$94,110	\$2,572.00	PLUS	8.0%	\$74,466
\$94,110	AND OVER	\$4,143.52	PLUS	9.3%	\$94,110

  

<b>SCHEDULE Z</b> HEAD OF HOUSEHOLD TAXPAYERS					
IF THE TAXABLE INCOME IS		COMPUTED TAX IS			
OVER	BUT NOT OVER	OF AMOUNT OVER			
\$0	\$14,345	\$0.00	PLUS	1.0%	\$0
\$14,345	\$33,989	\$143.45	PLUS	2.0%	\$14,345
\$33,989	\$43,814	\$536.33	PLUS	4.0%	\$33,989
\$43,814	\$54,225	\$929.33	PLUS	6.0%	\$43,814
\$54,225	\$64,050	\$1,553.99	PLUS	8.0%	\$54,225
\$64,050	AND OVER	\$2,339.99	PLUS	9.3%	\$64,050



## 2008 Filing Requirement Amounts

## Gross income more than:

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Single or head of household	Under 65	14,845	25,145	32,870
	65 or older	19,795	27,520	33,700

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Married Or Married Filing Separate	Under 65 (both spouses)	29,690	39,990	47,715
	65 or older (one spouse)	34,640	42,365	48,545
	65 or older (both spouses)	39,590	47,315	53,495

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Qualifying widow(er)	Under 65	N/A	25,145	32,870
	65 or older	N/A	27,520	33,700

## Adjusted gross income more than:

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Single or head of household	Under 65	11,876	22,176	29,901
	65 or older	16,826	24,551	30,731

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Married Or Married Filing Separate	Under 65 (both spouses)	23,752	34,052	41,777
	65 or older (one spouse)	28,702	36,427	42,607
	65 or older (both spouses)	33,652	41,377	47,557

	Age on 12/31/08	No dependents	1 dependent	2 or more dependents
Qualifying widow(er)	Under 65	N/A	22,176	29,901
	65 or older	N/A	24,551	30,731

## HRA Program cut from 2008/2009 California state budget

The state budget approved for the 2008/2009 fiscal year deleted funding for the Homeowner and Renter Assistance (HRA) Program. With no funding in the state budget for this program, 2008 claims cannot be paid or processed.

In addition, funding has been reduced for all existing HRA workloads. Because of this, you may experience delays with phone calls, or HRA claims and correspondence for 2007 and prior years.

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## California's mortgage forgiveness debt relief law

The California mortgage forgiveness debt relief law is effective immediately. It is similar to federal law, but there are important differences.

The California law covers qualified debt forgiven in 2007 and 2008, and it:

- Limits the amount of qualified principal residence indebtedness to:
  - \$800,000 for taxpayers who file as married/registered domestic partners (RDP) filing jointly, single, head of household, or widow/widower.
  - \$400,000 for taxpayers who file as married/RDP filing separately.
- Limits debt relief to:
  - \$250,000 for taxpayers who file as married/RDP filing jointly, single, head of household, or widow/widower.
  - \$125,000 for taxpayers who file as married/RDP filing separately.

For more information, go to our [website](#) and search for [mortgage forgiveness](#).

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## Inside FTB

### Improvements to My FTB Account



The window to your info  
[ftb.ca.gov](http://ftb.ca.gov)

My FTB Account is a secure online service that provides a window to tax-related information. It provides self-service options to you and your clients, allowing you to view:

- Estimated tax payments.
- Recent payments made.

- The total balance due on the account.
- California wage and withholding.
- FTB-issued 1099-G and 1099-INT records.

We made improvements to My FTB Account, making it easier to use, adding new services, and linking to additional services we offer.

One new service we added is estimated tax payment email reminders. Let your clients know they can sign up to receive email reminders for their estimated tax payment due dates. Also, we value your feedback, so we added a survey feature upon logging out of My FTB Account. Be sure to give us your comments on new ways we can improve My FTB Account in the future.

Go to [ftb.ca.gov](http://ftb.ca.gov) and search for [My FTB Account](#).

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### **We want to hear from you about EASE**

We are developing an online registration application called External Authentication for Secure e-Services, or EASE. It will allow taxpayers, corporations, and tax professionals to self-register for access to FTB's secure e-Services. You can use EASE to select a login name and password, answer a few questions and quickly gain access to your own or your client's information. EASE will replace the Customer Service Number (CSN) currently used to access secure e-Services and is scheduled for implementation the summer of 2009.

Once the online registration application is implemented, we plan to add more e-Services to our website such as:

- Web Pay for corporations.
- Address Update capability for individuals and corporations.
- My FTB Account for corporations.
- View tax returns for individuals and corporations.

To help us make registration simple for tax professionals, we want your input on the following:

- Is it helpful for you to be able to view your clients' account information online?
- What kind of information would be most beneficial to view online?
- Would you need to access the accounts of all your clients or just some of them?
- What is the best method for you to get your client's permission to view their information online?
- What is a reasonable length of time for your client's permission to be valid?

Visit our [EASE webpage](#) to send us your comments!

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**Criminal Corner**

We are committed to closing California's \$6.5 billion tax gap, defined as the difference between tax that is owed, and tax that is paid. Our special agents work cooperatively with law enforcement agencies throughout California to uncover illegal behaviors that contribute to the tax gap. These behaviors include underreporting income, overstating deductions, failing to file returns, failing to pay taxes due, and making illegal cash payments to employees.

Tax fraud is not a victimless crime. You can report suspected tax fraud on the FTB website at [ftb.ca.gov](http://ftb.ca.gov), or by calling FTB at 800.540.3453.

**Former attorney convicted of stealing**

A former Santa Ynez attorney was convicted September 20, 2008, of defrauding senior-citizen clients of hundreds of thousands of dollars.

Alan Courtney's trial lasted six weeks, but the Santa Maria jury deliberated just hours before returning with guilty verdicts on all seven felony counts Courtney was charged with.

He was found guilty of four counts of filing a false tax return, two counts of theft from an elder or dependent adult and one count of forgery.

The jury also found that the amount of money Courtney stole from the elderly victims exceeded \$100,000 in both instances.

Courtney, who had been free during the trial, was immediately handcuffed and taken into custody at the conclusion of the court hearing before Santa Barbara County Superior Court Judge Arthur Garcia.

Courtney, in his mid-50s, stood trial on similar charges late last year and early this year in Santa Maria. A mistrial was declared after the jury spent more than five days deliberating the evidence and said they were unable to reach a unanimous decision.

The most recent trial was a retrial of the case, with the charges reduced from 13 counts to seven.

Courtney represented one of the victims, Rex Phillips of Solvang, and his wife, Diane, during a home sale. The other victims in the case, Frank Cox and Betty Moran, are relatives of Courtney.

Courtney was based in Santa Ynez at the time of the crimes in 2003 and 2004, but has since moved his law practice to Creston in northeastern San Luis Obispo County.

The State Bar will be notified of Courtney's conviction.

Courtney had \$68,000 in unpaid state income taxes, in addition to penalties, interest, and the cost of the investigation that he will have to pay to the Franchise Tax Board.